

Jeremiah W. (Jay) Nixon  
Governor



Chester L. White  
Director

Kelvin L. Simmons  
Commissioner

State of Missouri  
**OFFICE OF ADMINISTRATION**  
Division of Personnel  
430 Truman Building, 301 W. High Street  
PO Box 388  
Jefferson City, Missouri 65102  
[www.oa.mo.gov/pers](http://www.oa.mo.gov/pers)  
EMAIL: [persmail@oa.mo.gov](mailto:persmail@oa.mo.gov)  
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(573) 751-4162  
FAX (573) 751-8641

**TO:** Personnel Officers and Appointing Authorities  
**FROM:** Guy Krause, Division of Personnel  
**SUBJECT:** FMLA Provisions and SAM II HR/Payroll Codes

On January 28, 2008 the Family Medical Leave Act (FMLA) was amended to provide eligible employees working for covered employers two important new leave rights related to military service. The Final Rule with regard to these amendments under the Family and Medical Leave Act has been published by the Department of Labor's Wage and Hour Division with an effective date of January 16, 2009. Among other things, these regulations include provisions for utilizing Federal Compensatory balances as FMLA paid time off, as well as further detailing provisions for counting Holiday hours and Required Overtime hours, under particular circumstances, as FMLA time off. New SAM II HR Payroll codes have been developed to effect these provisions as explained below.

#### **Federal Compensatory Balances and FMLA**

Section 825.207(f) (Substitution of Paid Leave)

<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=21763>

(see Page 47 of the .pdf / Page 68,090 of the Federal Register itself)

*"(f) Section 7(o) of the Fair Labor Standards Act (FLSA) permits public employers under prescribed circumstances to substitute compensatory time off accrued at one and one-half hours for each overtime hour worked in lieu of paying cash to an employee when the employee works overtime hours as prescribed by the Act. This section of the FLSA limits the number of hours of compensatory time an employee may accumulate depending upon whether the employee works in fire protection or law enforcement (480 hours) or elsewhere for a public agency (240 hours). In addition, under the FLSA, an employer always has the right to cash out an employee's compensatory time or to require the employee to use the time. Therefore, if an employee requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the employer requires such use pursuant to the FLSA, the time taken may be counted against the employee's FMLA leave entitlement."*

Code	Long Description	Primary Category	Secondary Category
FCCFM	FED COMP-SRVC MR CARE/FMLA	FCOMP	FMLA2
FCEFM	FED COMP-EXIGENCY ACT DTY/FMLA	FCOMP	FMLA
FCFFM	FED COMP USAGE - FAMILY/FMLA	FCOMP	FMLA
FCSFM	FEDERAL COMP USAGE - SELF/FMLA	FCOMP	FMLA

## Holidays and FMLA

Section 825.200(h) (Amount of Leave)

<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=21763>

(see Pages 40-41 of the .pdf / Pages 67,972 – 67,973 of the Federal Register itself)

*“(h) For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee’s FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, if for some reason the employer’s business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (e.g., a school closing two weeks for the Christmas/New Year holiday or the summer vacation or an employer closing the plant for retooling or repairs), the days the employer’s activities have ceased do not count against the employee’s FMLA leave entitlement.”*

If you are using timesheet entry to record a full week of FMLA, and a holiday occurs in that week, use the code below to designate the holiday as FMLA.

Code	Long Description	Primary Category	Secondary Category
1FMHL	COUNT HOLIDAY AS FMLA	FMLA	

## Overtime and FMLA

Section 825.205(c) (Increments of FMLA leave for intermittent or reduced schedule leave)

<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=21763>

(see Page 157 of the .pdf / Page 68,089 of the Federal Register itself)

*“(c) Overtime. If an employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee’s ability to work overtime, the hours which the employee would have been required to work may be counted against the employee’s FMLA entitlement. In such a case, the employee is using intermittent or reduced schedule leave. For example, if an employee would normally be required to work for 48 hours in a particular week, but due to a serious health condition the employee is unable to work more than 40 hours that week, the employee would utilize eight hours of FMLA-protected leave out of the 48-hour workweek ( $8/48 = 1/6$  workweek). Voluntary overtime hours that an employee does not work due to a serious health condition may not be counted against the employee’s FMLA leave entitlement.”*

Code	Long Description	Primary Category	Secondary Category
1FMOT	COUNT REQU OT NOT WRKD AS FMLA	FMLA	

The above codes are available and ready for use in SAM II with an effective date of 1/16/09. Additional information on how to apply and/or report on these new leave events in SAM II HR is available through the Division of Personnel’s Pay Leave and Reporting Section at 522-1260.

Additional information on the amendments and a version of Title I of the FMLA with the new statutory language incorporated are available on the FMLA amendments Web site at

[http://www.dol.gov/esa/whd/fmla/NDAA\\_fmla.htm](http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm).

Additional compliance assistance materials are also available on the Department of Labor’s FMLA Final Rule Web site at <http://www.dol.gov/esa/whd/fmla/finalrule.htm>.

Revised FMLA Poster: <http://www.dol.gov/esa/whd/fmla/finalrule/FMLAPoster.pdf>